

OCT 07 2009

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELVIN JONES, JR.,

Plaintiff - Appellant,

v.

DANIEL WAINWRIGHT,

Defendant - Appellee.

No. 08-16679

D.C. No. 1:08-cv-00318-OWW-DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Melvin Jones, Jr. appeals pro se from the district court's judgment dismissing his independent action to set aside a prior judgment for fraud on the court pursuant to Rule 60(d) of the Federal Rules of Civil Procedure. We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion.

Appling v. State Farm Mut. Auto. Ins. Co., 340 F.3d 769, 780 (9th Cir. 2003). We affirm.

The district court did not abuse its discretion by dismissing Jones’s independent action because his allegations fail to state a claim for fraud on the court. *See United States v. Beggerly*, 524 U.S. 38, 47 (1998) (concluding that “an independent action should be available only to prevent a grave miscarriage of justice”); *see also Appling*, 340 F.3d at 780 (explaining that the term “fraud on the court” is read narrowly to mean “only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication”) (citation and internal quotation marks omitted).

Jones’s remaining contentions are unpersuasive.

Jones’s request to use the original record in the underlying case, which we construe as a request for judicial notice of relevant portions of that record, is granted.

AFFIRMED.